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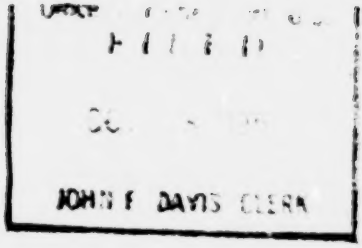

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 523

UNION EQUITY COOPERATIVE EXCHANGE, INC.,
ENID, OKLAHOMA,
Petitioner,

VERSUS

OKLAHOMA STATE BOARD OF EQUALIZATION,
Defendant.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

FRANK CARTER, of
OTJEN, CARTER, HUDDLESTON & OTJEN
1010 Bass Building
Enid, Oklahoma

October, 1961.

UTTERBACK TYPESETTING CO., 13 SO. WALKER OKLAHOMA CITY, PH CE 5-8750

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In the
Supreme Court of the United States
OCTOBER TERM, 1961

NO.

UNION EQUITY COOPERATIVE EXCHANGE, INC.,
ENID, OKLAHOMA,
Petitioner,

VERSUS

OKLAHOMA STATE BOARD OF EQUALIZATION,
Defendant.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Oklahoma entered in the above entitled case on July 11, 1961, rehearing denied August 1, 1961, mandate issued August 17, 1961.

OPINIONS BELOW

On July 10, 1961, the Supreme Court of the State of Oklahoma entered a memorandum decision denying the appeal of this petitioner from an unjust and discriminating tax assessment order of the Oklahoma State Board of

Equalization. A copy of such memorandum order is included in the Appendix "A." This memorandum decision as indicated referred to a decision of the Oklahoma Supreme Court entered shortly prior thereto, on June 13, 1961, in the case of *Garfield County* v. *The State Board of Equalization,* being Case No. 39423, and a copy of which decision is shown in the Appendix "B" hereof. The decision in the *Garfield County* case (this petitioner being a substantial taxpayer in Garfield County), and being one of several similar cases, in turn, incorporated and adopted by reference, the opinion of the Court in a companion case known as the *Canadian County* case, No. 39321, also decided June 13, 1961, and a copy of the opinion in that case is shown in Appendix "C" hereof.

Petition for rehearing was filed within the ten (10) days (Appendix C-1); and, on August 1, 1961, the petition for rehearing was by memorandum order denied; and, on August 17, 1961, a mandate was issued by the Supreme Court of the State of Oklahoma, which mandate is also shown in Appendix "D" hereof.

JURISDICTION

The judgment of the Supreme Court against this petitioner was rendered on July 10, 1961 (*infra,* Appendix "A"). A petition for rehearing was denied on August 1, 1961 (Appendix "E"). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C.A. 1257(3).

QUESTION PRESENTED

Whether or not the State Board of Equalization of the State of Oklahoma violated the guarantees contained in the Fourteenth Amendment to the Constitution of the United States, when it intentionally, systematically, and arbitrarily discriminated against this petitioner by increasing its assessed valuation on its elevators and other properties outside the city limits of Enid, Oklahoma, by ten per cent (10%) (thereby exceeding the constitutional limit) while, at the same time, increasing the assessed valuation on similar and competitive elevators and properties within the city limits by less than one-fifth of said rate.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution of the United States.

OKLAHOMA STATUTES, INTERPRETATIONS AND CONSTITUTIONAL PROVISIONS INVOLVED

These are set forth in Appendix "F," *infra*.

STATEMENT OF FACTS

Union Equity Cooperative Exchange, a substantial grain storage and grain marketing facility at Enid, Oklahoma, owns and operates concrete elevators just outside the city limits of Enid, with more than fifty million bushel capacity. It is one of the largest taxpayers of Garfield County, paying over one million dollars a year in Federal income tax since 1950; and, ad valorem taxes to Garfield County, in 1960, in the amount of $207,000.00.

There are grain elevators within the city limits of Enid owned by other firms, such as, Enid Terminal Elevator Company, General Mills, Farmers Grain, Pillsbury, and Johnston Grain Company (R. 413, 414, 441, Appendix G-1). All of these elevators at Enid compete with each other in the storage and merchandising of grain. For assessment purposes, all of these elevators have heretofore been assessed on a basis of ten cents per bushel capacity, which is approximately one-third of their fair cash market value (R. 413, Appendix G-1). In order to maintain equalization among them for tax purposes, all elevators in Garfield County, with the approval of the Oklahoma Tax Commission (R. 450, Appendix G-2), have been assessed at that uniform rate.

In 1958, the Oklahoma Tax Commission sent its field men into the State, and, by examining real estate transactions as reflected by the records of the Registrar of Deeds in each county, attempted to determine the ratio between the values of properties which had actually been sold, and their assessed valuations. For this study, property was classified into "Rural" and "Urban." In Garfield County (R. 1365), ninety-three (93) rural transactions were examined and some 658 urban transactions.

From that ratio study, the Commission determined (R. 1365) that the average assessed valuation of property in all counties in the State, compared with actual valuation, was 22.07 per cent. The ratio thus determined for Garfield County was 20.22 per cent.

In making that study, with respect to the rural transactions in Garfield County, the field man testified (R. 466-

467) that he did not include any transactions in the study of Garfield County concerning rural property in which a corporation was involved, but just included "rural farms."

Pursuant to this study made by the Oklahoma Tax Commission, the Board of Equalization at a meeting on August 3, 1960, entered an Order (Appendix "H") directing the County Assessor of Garfield County to increase "rural land and improvements" by 10 per cent, and "urban land and improvements," 1.75 per cent. "Personal property, none." Petitioner's property is "rural land and improvements" in the sense that it is not within the City.

Within ten days after the issuance of such notice, this petitioner, as a taxpayer, filed its complaint (Appendix "I") as did the County Attorney for Garfield County.

Fourteen other counties also filed protests or complaints; and, pursuant thereto, an extensive hearing was held before the Board. Testimony was taken, and the voluminous record consists of three volumes. On September 1, 1960, after the hearing had been concluded, the Board denied all of the protests, including that of your petitioner. On October 25, 1960, the Board adjourned sine die; within ten days thereafter, as provided by law, this petition was appealed therefrom to the Supreme Court of Oklahoma.

MANNER AND STAGES AT WHICH FEDERAL QUESTION WAS RAISED

In the first complaint filed with the State Board of Equalization (Appendix "I"), petitioner made the following assertion:

"The proposed increase is arbitrary, discriminatory, and capricious, and in violation of Article X, Section 5, of the Constitution of Oklahoma, requiring uniformity of taxation upon the same class of subjects. The effect thereof will be to deprive this taxpayer of its property without due process of law."

On appeals from the State Board of Equalization to the Oklahoma Supreme Court, the filing of a petition in error is not provided for, and the next opportunity petitioner had to assert the Federal question was in its brief, wherein the question was raised as its first proposition, in the same language as set forth above (Appendix "J").

The memorandum order of the State Supreme Court entered on July 10, 1961, denied petitioner's appeal without comment. The effect was that the question was raised at each stage of the proceeding and denied.

REASONS FOR GRANTING THE WRIT

The writ should be granted, because:

1. The order of the Board is discriminatory.

   A. It would result in a discriminatory increase in the assessed valuation of the property of this taxpayer from $4,251,502.00 by increasing it 10 per cent, or $425,150.00, without making the same percentage of increase in other properties of the same class lying inside of the city limits. (R. 1264, 1265, Appendix "H".)

2. The order of the Board is based upon an unrealistic and unauthorized classification. A city boundary line

constitutes no just or reasonable factor in the classification of property, for tax purposes.

As stated by the Honorable Justice Welch, concurred in by all the Court in 1949, in the case of *Custer County Excise Board* v. *St. Louis-San Francisco Railway Company*, 207 P.2d 774:

> "Obviously there is no difference between rural property and urban property in its relation to an ad valorem tax or a tax based on values, so that one property may be distinguished from the other as an object of taxation. Location alone is not a basis for the classification of the property for purposes of taxation on a basis of value. Rural and urban property being in the same class as a subject of ad valorem tax, it follows that uniformity requires that all such property within the confines of the county for which an ad valorem tax is levied should be treated alike * * *."

This Court has also recognized the fallacy of boundary line classification, when there are other overriding elements, as here.

In *Wheeling Steel Corp.* v. *Glander*, 69 Sup. Ct. 1201, 337 U.S. 580, involving inequality of treatment of foreign and domestic corporations in the ad valorem taxation of intangibles, the Court said:

> "It seems obvious that appellants are not accorded equal treatment, the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction, but solely because of the different residence of the owner."

3. The Board violated the standards established by its own Supreme Court in arbitrarily increasing the value of petitioner's property.

Its order cannot stand where there is "gross error" in the system on which the valuation is made. *Carrico* v. *Crocker*, 38 Okla. 440, 133 Pac. 182.

There can be no question but that "gross error" was committed, when the assessed valuation of a large industrial facility such as petitioner's is permitted to be increased on the basis of the estimated sale price of 93 unrelated agricultural tracts in the county (R. 457).

4. The proposed increase would assess petitioner's property in excess of the constitutional limitation.

   A. The actual cash value of petitioner's property located outside the city limits of Enid is $12,884,975.00 (R. 1264). The assessed valuation for 1960 was $4,251,502.00. The added 10 per cent increase makes a total assessed valuation of $4,676,652.00, which is 36.61 per cent of the value thereof; is in excess of the constitutional limitation of 35 per cent; and is over one and one-half times the county ratio of 20.22 per cent.

5. The question is not moot because the tax represented by this increase is being held in trust by the County Treasurer, pending determination of the question by this Honorable Court.

6. The discrimination between taxpayers owning and operating the same types of property in the same vicinity; the arbitrary use of a city boundary as a standard by which to determine the values of property; the gross error in the system applied by the Board; and the assessment of petitioner's property above the constitutional limitation, each, individually, and jointly, result in denying this petitioner the equal protection of the laws; and deprive it of its property without due process of law.

This Court has afforded relief in the following analogous cases:

—*Cumberland Coal Co.* v. *Board of Revision*, 284 U.S. 23, 52 Sup. Ct. 48, 76 L. Ed. 146;

Iowa Des Moines National Bank v. *Bennett*, 284 U.S. 239, 245, 52 Sup. Ct. 133, 135, 76 L. Ed. 265;

Concordia Fire Ins. Co. v. *Illinois*, 292 U.S. 535, 54 Sup. Ct. 830, 78 L. Ed. 1411;

Sioux City Bridge v. *Dakota Co.*, 260 U.S. 441, 43 Sup. Ct. 190, 67 L. Ed. 340.

It is submitted that the action of the Board involves such an arbitrary disregard of the principles heretofore enunciated by this Court, as to call for review of the ruling below.

Respectfully

FRANK CARTER, of
OTJEN, CARTER, HUDDLESTON & OTJEN
1010 Bass Building
Enid, Oklahoma

October, 1961.

APPENDIX

APPENDIX "A"

FILED
In Supreme Court
of Oklahoma
Jul 11 1961
Andy Payne, Clerk

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

IN THE MATTER OF THE PROPOSED INCREASE IN TAX ASSESSMENT OF UNION EQUITY COOPERATIVE EXCHANGE.	)))	No. 39421

MEMORANDUM DECISION BY ORDER

Now on this 10th day of July, 1961, this cause coming on for consideration and the court having examined the record and it appearing from the record and briefs that the appeal should be disposed of by memorandum decision by order as provided by 12 O. S. 1959 Supp., Section 976:

1. The court finds that this is an appeal from the order and judgment of the State Board of Equlization in the matter of the proposed tax increase for Garfield County; that the matter has been determined in favor of the State Board of Equalization and against Garfield County in The Board of County Commissioners of Garfield County, Oklahoma v. State Board of Equalization of the State of Oklahoma, No. 39423, in an opinion promulgated June 13, 1961.

It is therefore the order of this court that the order of the State Board of Equalization of the State of Oklahoma be affirmed.

It is further ordered that the period for filing a petition for rehearing herein be and is hereby reduced to 10 days from the date of the filing of this order.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 10th day of July, 1961.

Ben T. Williams
Chief Justice

APPENDIX "B"

BOARD OF COUNTY COM'RS OF GARFIELD COUNTY v. STATE BOARD OF EQUALIZATION

No. 39423. June 13, 1961.

(Syllabus.)

1. TAXATION — *Equalization — Power of Board.*

Where the State Board of Equalization determines, in proper proceedings before it, that rural property, as a class, or generally, is valuated lower, in ratio to its fair cash value, than urban property, the fact that the Board's order requires such valuation to be increased at a greater rate than the rate of increase ordered for urban property, does not, in and of itself, demonstrate that the order violates the Oklahoma Constitution's Article X, section 5, requiring taxes to be "uniform upon the same class of subjects."

Appeal from an Order of the State Equalization Board.

Proceedings before the State Board of Equalization, in which, upon consideration of a complaint therein filed by the Board of County Commissioners of Garfield County, Oklahoma, among others, said Board refused to modify or vacate its previous order directing increases in property valuations in the counties involved; and said Commissioners Board appeals. Affirmed.

Robert L. Gregory, County Atty., Garfield County, for plaintiff in error.

Mac Q. Williamson, Atty. Gen., Fred Hansen, First Asst. Atty. Gen., L. G. Hyden, Asst. Atty. Gen., Albert D. Lynn, General Counsel Oklahoma Tax Commission, Ed. Armstrong, Asst. Counsel Oklahoma Tax Commission, for defendant in error.

Otjen, Carter, Huddleston & Otjen, By: Frank Carter, Enid, for Oklahoma Farm Bureau, Amicus Curiae.

PER CURIAM. Plaintiff in error has lodged the present appeal from the same order of the State Board of Equalization appealed from in other cases this day decided, including cause No. 39321.

Complaint is herein made of said order's requirement that valuations in Garfield County be increased the same respective percentages as it is shown, in the cited case, to require in Canadian County.

There is no material difference between the arguments advanced under plaintiff in error's two propositions for reversal here, and those advanced under the first two propositions the appellant urged for reversal in that case, except here plaintiff in error adds to its second proposition, the assertion that the order ". . . WILL DEPRIVE A TAXPAYER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW." However, plaintiff in error's brief sets forth no argument nor authority to support said assertion. It therefore presents no ground for reversal. Thrasher v. Board of Governors, Okl., 359 P.2d 717. All other arguments of plaintiff in error have been rejected as grounds for the order's reversal in Cause No. 39321, supra. The applicable portions of our opinion in that case are therefore adopted, by reference, as our opinion herein.

Affirmed.

The period for filing a petition for rehearing herein is also reduced to 10 days, as ordered in the cited case.

WILLIAMS, C.J., BLACKBIRD, V.C.J., and WELCH, DAVISON, HALLEY, JOHNSON, and BERRY, JJ., concur. IRWIN, J., concurs specially. JACKSON, J., dissents.

IRWIN J. (concurring specially). I concur specially for the reasons set forth in Case No. 39321, Board of County Commissioners of Canadian County, Oklahoma, v. State Board of Equalization, promulgated this date.

APPENDIX "C"

BOARD OF COUNTY COM'RS OF CANADIAN COUNTY v. STATE BD. OF EQUALIZATION.

No. 39321. June 13, 1961.

(Syllabus.)

1. TAXATION — *Equalization — Power of State Board.*

Where the State Board of Equalization determines, in proper proceedings before it, that rural property, as a class, or generally, is valuated lower, in ratio to its fair cash value, than urban property, the fact that the Board's order requires such valuation to be increased at a greater rate than the rate of increase ordered for urban property, does not, in and of itself, demonstrate that the order violates the Oklahoma Constitution's Article X, section 5, requiring taxes to be "uniform upon the same class of subjects."

2. SAME.

The fact that the order, above referred to, had the effect of requiring an increase of valuations in the majority, but not all, of this state's counties, did not convert it from a tax equalization measure to a scheme to increase taxes in the counties affected, absent a showing that valuations in the counties not affected did not conform to the standard followed in the order.

3. SAME.

The fact that the Board, in arriving at its decision reflected in said order, considered a "ratio study," which included more rural property in two of a particular county's geographical ranges, than in other parts of said county, did not demonstrate that the Board erred, in view of the evidence.

4. SAME.

In view of the demonstration that taxpayers are not relegated to their county equalization boards for relief against erroneous orders of the State Board of Equaliza-

tion, the claim, in the present case, that the latter Board's order was entered too late to afford them such relief, presented no cause for reversal.

5. SAME.

The Amendment of the Oklahoma Constitution's Art. V, sec. 8, in 1958, amended existing statutes governing the valuation of property for ad valorem taxes.

Appeal from an Order of the State Equalization Board.

Proceedings before the State Board of Equalization, in which, upon consideration of a complaint therein filed by the Board of County Commissioners of Canadian County, Oklahoma, among others, said Board refused to modify or vacate its previous order directing increases in property valuations in the counties involved; and said Commissioners' Board appeals. Affirmed.

John V. Whelan, County Atty., Canadian County, El Reno, and J. A. Rinehart, Co-Counsel, El Reno, for plaintiff in error.

Mac Q. Williamson, Atty. Gen., Fred Hansen, First Asst. Atty. Gen., and L. G. Hyden, Asst. Atty. Gen., Albert Lynn, General Counsel, Oklahoma Tax Commission, Ed Armstrong, Asst. Counsel, Oklahoma Tax Commission, for defendant in error.

Oklahoma Farm Bureau, By: Frank Carter, and Otjer Carter, Huddleston & Otjer, Enid, amicus curiae.

PER CURIAM. This appeal from an order of the State Board of Equalization, hereinafter referred to as appellee, arose out of proceedings before said Board, dealing with complaints filed by Board of County Commissioners of various counties in the state, against the appellee Board's previous order directing an increase of valuations for assessment of ad valorem taxes, in 63 of the state's 77 counties.

[APPENDIX]

The order referred to rural land and improvements as one class of property, and to urban land and improvements as another class: It required a 10% increase in valuations for the first class, and a 1.75% increase for the latter class. These ordered increases were in accord with findings made by the Oklahoma Tax Commission, under Title 68 O.S. 1951, sec. 1345, on the basis of a so-called "ratio study" said Commission had previously made in the various counties in the state.

The complaint involved herein is the one filed with the appellee Board by the Board of County Commissioners of Canadian County, hereinafter referred to as appellant. This complaint alleged, in substance, that the County Assessor of Canadian County had already assessed such property for the year 1960, in accord with the Oklahoma Constitution's Article X, section 8, as amended; that the increases ordered by the appellee Board are not in accord with said section, and said increases—by being different for urban, and rural property, respectively—raise the assessment of similar property, similarly used, by different amounts; and are thus discriminatory, and, not only do not equalize valuations in the several counties, but " . . . bring about an unequalized situation within Canadian County." The complaint further alleged:

"* * *

"4. That the Order of said State Board of Equalization comes too late and was not made until after the assessment rolls of Canadian County had been made up and were no longer subject to correction or adjustment by the State Board.

"5. That said Board by law met on the third Monday of June, 1960, but gave no notice of any increased assessment to the County Commissioners of Canadian County until August 5, 1960, some 45 days later. That under Statute such Order adjusting, correcting, or equalizing assessments should have been made long prior thereto.

"6. That an unusual situation does exist in Canadian County due to the location of greater Oklahoma City, same being a part of Canadian County, which by reason of the application of the State Equalization Board Order creates, a unique, unequalized, and discriminatory tax situation."

At the hearing before the appellee Board, it was shown, among other things, that the Oklahoma Tax Commission, in making its aforementioned "ratio study," arrived at its figures for the "fair cash value" of the two classes of property (urban and rural) by considering conveyance records, along with tax assessment records, in the various counties; and, for the purpose of said study, classified all unplatted property outside of city, or town, limits, as "rural," and all other property as "urban."

After all evidence had been introduced, and arguments heard, the appellee Board, on September 1, 1960, entered the order herein appealed from, denying appellant's complaint, among others, and "finalizing" the valuation increases specified in its original order of August 3, 1960.

In its present appeal from the later order, appellant urges that the order violates the Oklahoma Constitution's Article X, section 5, requiring taxes to be uniform through the state's various counties on the same class of subjects. It contends, in substance, that the division or classification of property into rural and urban (as was therein done) can be no part of a proper method of equalizing taxes on the basis of value. At the oral argument before this court, it was further contended that the appellee Board is without power to equalize valuations within a county, and that its power is confined to equalizing them among, or between, counties. These contentions are determined against appellant by what this court said in Appeal of McNeal, 35 Okla. 17, 128 P. 285, as follows:

"We have our attention called . . .

* * *

"Also to the case of State ex rel. v. Vaile, 122 Mo. 33, 26 S.W. 672, wherein the state board of equalization, by order, provided that in Jackson County the valuation of lands should be reduced 25 per cent and town lots 50 per cent. This it was held to be without power to do, for the reason that section 7514, Revised Statutes 1889, provided that the board shall equalize the valuation of the property 'among the respective counties . . .'. * * * It is to be observed that this statute is dissimilar to the statute under consideration in this case . . . Discussing this (Missouri) statute, the Supreme Court of Missouri says: 'The meaning of this statute it seems to us is clear. It gives the board power to equalize the value of property, real or personal, among the counties; but it gives that board no power to go into any county and equalize the value of parcels or classes of real estate therein. That is a matter confided by the law to the county board of equalization. The powers of the two boards are entirely different. The state board deals with the entire county assessment . . ., while the county board deals with individual assessments. The state board . . . has nothing to do with adjusting the values of different parcels of land in the same county. Inequalities between parcels of land or *classes* of land in the same county are matters within the exclusive jurisdiction on the county board. The state board has nothing to do with them.

"Just the power as to classes of property which the state board of equalization lacked in Missouri has been specifically conferred upon the state board of equalization of this state. The Missouri board found on an investigation that the lands of Jackson County had been assessed at 25 per cent in excess of the amount which they should have been assessed, and that the town lots had been assessed 50 per cent in excess of that amount, but it lacked the power to equalize and equitably adjust this difference. Therefore its action in endeavoring to do this was held void. The consequence was an injustice or inequality and

lack of uniformity in the taxation of this property. *This was just the situation and defect which would exist in our law, except for the act here inveighed against;* and it was to correct the manifest certainty of inequality inherent in the administration of such a system that the Legislature of the state wisely provided and invested the state board with the power to equalize between the valuation of classes of property, where the same was unequal. For instance, if the board should discover that in some county of this state the value of farm lands was placed at their fair cash value, and that the town lots had been assessed at but one-half of their fair cash value, it had the power, without disturbing the farm values, to raise the valuation of the town lots, and thus bring about uniformity in the burden of taxation between the owners of these two classes of property. * * *." (Emphasis ours.)

The language quoted by appellant from Custer County Excise Board v. St. Louis & S. F. Ry. Co., 201 Okla. 528, 207 P.2d 774, is not applicable here. There, this court was obviously referring to "rate of levy", rather than to valuation. In Blake v. Young, 128 Okla. 153, 261 P. 923, we held that the uniformity provision in the Oklahoma Constitution's Art. X, sec. 5, which appellant claims the challenged order violates, relates to the rate of taxation, and *not to the valuation of property.* See, also Cooley on Taxation (4th Ed.) p. 638.

Under its second proposition for reversal, appellant contends that, since the order appealed from directed increased valuations in only 63 of the state's 77 counties, it cannot be characterized as ". . . a bona fide attempt to equalize, correct and adjust taxes as between all of the counties, but, on the contrary, it was a plan, scheme and design to raise (only) a number of counties to what the Tax Commission, proper raise . . .". Appellant concedes or the Board, conceived to be the proper raise . . .". Appellant concedes that great "latitude" is given the appellee Board

in selecting the method it may think proper in carrying out tax equalization. But it charges that any scheme which omits 14 of the 77 counties is arbitrary, capricious, contrary to the intention of the statutes, and cannot be said to be based on true "ratio study." We find no merit in these arguments. For all that the record shows, valuations in the 14 counties unaffected by the order had already been raised toward the constitutional limit of: not to exceed 35% of fair cash value; and apparently the Board considered it neither necessary nor advisable to increase them at this time. But, be that as it may, the standard should be applied without reference to whether it has been attained by one, or more, of the state's counties, or none of them. See 84 C.J.S., "Taxation", sec. 502. It was proper for the appellee Board to order an increase in valuations in those counties which did not measure up to the proper standard. Appeal of McNeal, supra.

Under its Proposition III, appellant contends that the rate, or percentage, of valuation increase, specified in the order for rural property, is not in accord with the ratio of its true value to that of urban property. Appellant seeks to demonstrate this by reference to portions of the evidence introduced before the Board to the effect that certain rural lands in the eastern part of Canadian County—near metropolitan Oklahoma City—have recently sold at speculative, or inflated prices—not because of their value as farm, or true "rural", property, but because of their present, or potential value, for urban, or industrial, development, or as "show places" for Oklahoma City businessmen.

At the oral argument, appellant conceded that neither of the two particular tracts mentioned in its brief, as having such inflated values, were included in the ratio study. Nor does examination of the "work sheets" on the Canadian County tracts used in the study support the argument in appellant's reply brief that, since 40 of the 75 tracts used are located in the two Ranges (5 and 6) nearest Oklahoma

City, the study reflects fictitious and unreal values, rather than true farm, or rural, values in said County. When the figures appearing on the work sheets in their "maximum value less $250.00" column, for the 31 tracts in Range 5, are added, and the average value per tract is computed, the result is $11,877.41. When the same computation is made as to the 9 tracts in Range 6, the result is an average such value per tract of $14,211.11. Yet, when the same computation is made with reference to the tracts in Range 8 (that were used for the ratio study) the average such value arrived at for those properties was the even higher figure of $15,437.50. By way of further refuting appellant's argument that use of eastern Canadian County tracts in the ratio study, prevented it from reflecting true rural values in the county as a whole, counsel for the Oklahoma Tax Commission pointed out, at the oral argument, that the study shows that those in the eastern Ranges were already assessed at a greater percentage of their actual cash value than those in two Ranges in the Western part of the County.

Appellant's Proposition IV is as follows:

"THE ORDER OF THE STATE BOARD OF EQUALIZATION WAS NOT MADE IN TIME TO PERMIT COUNTY ASSESSORS TO MAKE ORDERLY COMPLIANCE THEREWITH UNDER MANDATORY STATUTES TITLE 68 O.S.A. 1951 SEC. 15.55 AND TITLE 68, SEC. 15.59 O.S.A. 1951, UNDER SATUTES COUNTY EQUALIZATION BOARDS WERE THEN UNABLE TO AFFORD ANY RELIEF TO TAXPAYER."

Under this Proposition, appellant points out that each of this State's county assessors is required, by Title 68 O.S. 1951, sec. 15.55, under the penalty prescribed in Section 15.59 of the same title, to complete the tax rolls, and abstract thereof, for this county ". . . and deliver the same to the County Treasurer and County Clerk, respectively

on or before the 1st day of October of each year." It is contended that since the order, herein appealed from, was not entered until September 1, 1960, there was not sufficient time between that date and October 1st, to enable county assessors of the State to comply with it in an orderly manner, since many of them—on the date of said order—had already made up the tax rolls. The inference that the taxpayer has no relief from the levy of excessive taxes in accord with the order, is predicated on the assumption that his only remedy is that prescribed by Title 68 O.S. 1951, section 15.40 to be obtained from his county board of equalization. It is argued, in substance, that since said statute contemplated that such boards terminate their sessions "not later than the 1st Monday in June . . .", there can be no opportunity for obtaining relief at the hands of said board from an order like the one here involved, that is not entered until months later. We think appellee sufficiently answers these arguments by pointing out that the records of the Oklahoma Tax Commission reveal that all of the counties in which this order required valuation increases, have complied with it in an orderly manner; and that application of the provisions of Title 68 O.S. 1951, section 15.48 will save taxpayers from any loss, or detriment, by reason of excessive taxation, under the order appealed from.

In the brief of Amicus Curiae, the contention was made, and adopted by appellant at the oral argument, that the portion of Sec. 15.44 of Title 68, supra, requiring the appellee board's equalization of property valuations to conform to its fair cash value is contrary to our Constitution's Art. X, sec. 8, as amended by the special election held July 1st, 1958, which said amendment created a 35% of "fair cash value" limitation on such valuation. It is argued that this conflict renders all of Section 15.44 unconstitutional and void, as (it is argued or inferred) the Legislature would not have enacted any of said section, without including in it, some valuation limitation; and that this

section being void, renders the dependent section 15.45 of the same Title also inoperative; and consequently the entire proceeding before the appellee Board, and all orders issuing out of it, are void. No Oklahoma case is cited by way of demonstrating that such argument is applicable to a situation like the present one, but, upon consideration of the tests to determine whether a constitutional limitation, or restriction, is self-executing (in this connection, see the quotation from 12 C.J. 719 in Oklahoma County Excise Board v. Kurn, 189 Okla. 203, 115 P.2d 113, 115, and Williams v. City of Norman, 85 Okla. 230, 205 P. 144, 147, 148) and, in accord with our duty to uphold existing law when it may operate in aid of a Constitution amendment (Linthicum v. School Dist. No. 4, 49 Okl. 48, 149 P. 898) and may be held to be amended by it (City of Tombston v. Macia (Ariz.) 245 P. 677, 682, 46 A.L.R. 828, 834; 11 Am. Jur., "Constitutional Law", sec. 36, Note 16) we hold that the recent amendment of Art. X, sec. 8, supra, does not repeal or nullify, but only amends one portion—the "fair cash value" provision—of the previously existing law.

As, in the arguments of the appellant, we have found no valid cause for reversing the order appealed from, the same is hereby affirmed.

Due to the exigencies related to the element of time affecting the situation involved herein, the usual 15 day period allowed by this court's Rule No. 28 for the filing of petitions for rehearing generally, is, as applied to this case, reduced to 10 days.

WILLIAMS, C. J., BLACKBIRD, V. C. J., and WELCH, DAVISON, HALLEY, JOHNSON, and BERRY, JJ., concur. IRWIN, J., concurs specially. JACKSON, J., dissents.

IRWIN, J. (concurring specially). Article X, sec. 21, of the Constitution of Oklahoma provides that the duty of the State Board of Equalization shall be to adjust and

equalize the valuation of real and personal property of the several counties of the State. Title 68 O.S. 1951, Sec. 15.43, provides that the Oklahoma Tax Commission shall render its findings as to the adjustment and equalization of the valuation of real and personal property of the several counties of the State and such findings shall be laid before the State Board of Equalization as recommendations for its final action. Title 68 O.S. 1951, Sec. 15.44, provides that the State Board of Equalization shall hold a session commencing on the third Monday in June of each year for the purpose of equalizing the property of the several counties and it shall be the duty of the Board to equalize, correct and adjust the same as between the several counties and of the several counties.

The Oklahoma Tax Commission conducted a study, made findings and submitted its recommendations to the State Board of Equalization. The study was based on certain sales and transactions as compared with the assessed valuations and from this study the Tax Commission ascertained the average state-wide valuation of urban and rural property. The State Board of Equalization based its order on the recommendations of the Tax Commission.

It has not been seriously contended that inequalities in valuations did not exist within some counties and between the several counties for many years. And, in my judgment, the evidence is sufficient to establish that the "ratio study" made and prepared by the Oklahoma Tax Commission and submitted to the State Board of Equalization, if not entirely correct, is substantially correct, and that the same was a proper yardstick upon which the State Board of Equalization could act.

The record fails to disclose that any previous order, similar or comparable to the order appealed from, has ever been rendered by the State Board of Equalization. Therefore, in my judgment, if inequalities in valuations do exist within some of the counties and between the

several counties, the seeds for such inequalities were not planted nor did they sprout within a year prior to the time the "ratio study" was commenced. The seeds for such inequalities were planted shortly after statehood, nurtured for a few years and sprouted many years ago.

In my judgment, the Legislature, the Tax Commission, and the State Board of Equalization recognized that inequalities within some counties and between the several counties existed. The State Senate and the House of Representatives, by separate Resolutions, stated that "it has been frequently reported that gross inequities exist in the assessment of real and personal property as between the various counties of Oklahoma as well as within the counties." In the Resolutions, the State Board of Equalization was requested and directed to inquire into the valuation and to make adjustments and equalizations thereof. However, it must be noted, the separate Resolutions enacted by the State Senate and House of Representatives did not *direct* the State Board of Equalization to equalize the valuations for the fiscal year 1959-60, but merely requested such be done. In my judgment, the Legislature recognized that inequalities of valuation had come about over a period of years and that an adjustment and correction thereof should be brought about over a period of years.

The Oklahoma Tax Commission found and stated that to adjust all counties to the average ratio would require an increase in some counties as much as 75% and that "to attempt an immediate increase of the value of any county in this State by 75% per year, would create an undue hardship upon all concerned and in order to accomplish an orderly transition", recommended that no valuation should be increased more than 10%. The State Board of Equalization followed these recommendations.

In my judgment, inequalities in valuations existed within some counties and between the several counties

for many years before the State Board of Equalization rendered its order. And in my judgment, the Order does not adjust and correct the inequalities as it is apparent inequalities still exist. However, the Order of the State Board of Equalization did remove some of the inequalities and is a step toward granting to all the taxpayers their right to have their property assessed equally and uniformly with the property of every other taxpayer.

The question then arises: "Where the Constitution and the statutes provide that the State Board of Equalization shall adjust and equalize the valuations, is an order which only tends to adjust and equalize valuations valid?"

The Tax Commission found in substance that to completely adjust and equalize the valuations in a single order or in any one year, "would create an undue hardship on all concerned." In my judgment, where a rigid interpretation of the Constitution and our statutory provisions would create an undue hardship on the peoples of our state, which in effect would threaten the public welfare, then we should, without hesitation, apply a reasonable and practical interpretation in accord with common sense.

In my judgment, a reasonable and practical interpretation of our Constitution and statutory provision authorizes and empowers the State Board of Equalization to render the Order appealed from. I therefore concur specially in the opinion promulgated by a majority of my associates.

I am authorized to state that Mr. Justice DAVISON concurs in the views herein expressed.

APPENDIX "C-1"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE PROPOSED	:	
	:	
INCREASE IN TAX ASSESSMENT OF	:	
	:	No. 39421
UNION EQUITY COOPERATIVE	:	
	:	
EXCHANGE.	:	

PETITION FOR RE-HEARING

COMES NOW Union Equity Cooperative Exchange, plaintiff in error, by and through its attorney, Frank Carter, of Otjen & Carter, and respectfully represents to the Court that on the 10th day of July, 1961, a Memorandum Decision was rendered by this court in said cause, confirming the Order and Judgment of the State Board of Equalization in the matter of the proposed tax increase for Garfield County.

Said decision overlooked a question decisive of the case, and duly submitted by counsel, that the standard and distinction between rural and urban property as used by the Oklahoma Tax Commission in making the ratio study resulting in the Order by the State Board of Equalization, was arbitrary, discriminatory, and capricious. That the testimony of the representative of the Oklahoma Tax Commission showed that the valuations were determined solely on the basis of rural and urban property, with no consideration given to industrial property immediately adjacent to the city limits. That the property of this plaintiff in error is immediately adjacent to the city limits of Enid, Oklahoma, certain portions of said property lying within the city limits and certain portions lying without the city limits, with the

result that under the Order of the Board of Equalization, portions of the property within the city limits will have a valuation increase of 1.75% while like structures immediately adjacent thereto, but lying outside of the city limits, will have a valuation increase of 10%. Said difference in valuation for like industrial structures which are similarly situated based upon the sole distinction of being either rural or urban is arbitrary, discriminatory, unconscionable, and in violation of due process of law, of each taxpayer.

WHEREFORE, plaintiff in error prays that a re-hearing of said cause may be granted by your Honorable Court.

UNION EQUITY COOPERATIVE EXCHANGE,
PLAINTIFF IN ERROR,
BY OTJEN & CARTER, ITS ATTORNEYS
ENID, OKLAHOMA
By: .....
FRANK CARTER

CERTIFICATE

I, William J. Otjen, Jr., hereby certify that I have served a copy of the foregoing Petition for Re-Hearing upon the Defendant in Error, State Board of Equalization for the State of Oklahoma, by mailing a true copy thereof to its attorney, Mac Q. Williamson, Attorney General of the State of Oklahoma, and to the Secretary of the Board of Equalization of the State of Oklahoma, Andy Anderson, Capitol Building, Oklahoma City, Oklahoma, on the 19th day of July, 1961, at the United States Post Office in Enid, Oklahoma, said envelopes being duly addressed, and having prepaid postage thereon.

OTJEN & CARTER
ATTORNEYS FOR PLAINTIFF IN ERROR
By: .....
WILLIAM J. OTJEN, JR.

APPENDIX "D"

STATE OF OKLAHOMA)
) SS. MANDATE
SUPREME COURT)

Board of Equalization

IN THE MATTER OF THE PROPOSED INCREASE IN TAX ASSESSMENT OF UNION COOPERATIVE EXCHANGE

FILED
Aug. 18, 1961
ANDY ANDERSON
STATE AUDITOR

Plaintiff in Error,

vs. No. 39421

Defendant in Error.

THE SUPREME COURT OF OKLAHOMA:

To the Honorable Judge of the State Board of Equalization County, in said State of Oklahoma.

Whereas, the Supreme Court of the State of Oklahoma, did on the 11th. day of July, 1961 render an opinion in the above entitled cause, appealed from the State Board of Equalization of State of Okla.

AFFIRMED

Now, Therefore, you are hereby commanded to cause such affirmance to show of record in your court and to issue such process and take such other and further action as may be in accord with right and justice and said opinion.

Witness, the Honorable Ben T. Williams, Chief Justice of the Supreme Court of the State of Oklahoma, at the City of Oklahoma City, this 17th. day of Aug. 1961

ANDY PAYNE, Clerk

SEAL By /s/ Ethel C. Hammett, Deputy

[APPENDIX]

I, Andy Anderson, State Auditor, and Secretary of State Board of Equalization of the State of Oklahoma, do hereby certify that the above and foregoing is a full, true and complete copy of Mandate, as filed in my office on the 18th day of August, 1961.

In witness whereof I have hereunto set my hand and affixed the seal of the State Auditor, at Oklahoma City, this 18th day of August, 1961.

ANDY ANDERSON,
State Auditor and Secretary
State Board of Equalization

SEAL

APPENDIX "E"

Filed
IN SUPREME COURT
OF OKLAHOMA
Aug. 1, 1961
ANDY PAYNE, Clerk.

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

August 1, 1961

THE CLERK IS HEREBY DIRECTED TO ENTER THE FOLLOWING ORDERS:

39421—In re: Proposed Increase in Tax Assessment of Union Equity Cooperative Exchange. Petition for rehearing denied.

APPENDIX "F"

F-1 ARTICLE X, Section 5, Oklahoma Constitution:

> "The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects."

F-2 ARTICLE X, Section 8, Oklahoma Constitution, [As Amended July 1, 1958]:

> "All property which may be taxed ad valorem shall be assessed for taxation at its fair cash value estimated at the price it would bring at a fair voluntary sale, except real property and tangible personal property shall not be assessed for taxation at more than thirty-five per cent (35%) of its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer or other person authorized to assess values of subjects for taxation, who shall commit any wilful error in the performance of his duty, shall be deemed guilty of malfeasance, and upon conviction thereof shall forfeit his office and be otherwise punished as may be provided by law."

F-3 ARTICLE X, Section 21, Oklahoma Constitution:

> "There shall be a State Board of Equalization consisting of the Governor, State Auditor, State Treasurer, Secretary of State, Attorney General, State Inspector and Examiner, and President of the Board of Agriculture. The duty of said Board shall be to adjust and equalize the valuation of real and personal property of the several counties in the State, and it shall perform such other duties as may be prescribed by law, and they shall assess all railroad and public service corporation property."

F-4 ARTICLE X, Section 22, Oklahoma Constitution:

> "Nothing in this Constitution shall be held, or construed, to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means or methods."

F-5 *Custer County Excise Bd.* v. *St. Louis, San Francisco Ry. Co.*, 201 Okl. 528, 207 P(2) 774, (1949):

> "A classification of property for taxation must rest on some difference which bears a reasonable and just relation to the classification, and such classification cannot be made arbitrarily and without regard to limitation of §5 of this article that taxes shall be uniform on the same class of subjects."

F-6 TITLE 68, O.S.A., Sec. 15.43:

> "The Oklahoma Tax Commission shall render its findings as to the adjustment and equalization of the valuation of real and personal property of the several counties of the State; and such finding shall, within five days after all abstracts of county assessments, shall have been filed with said Commission, be by said Commission laid before the State Board of Equalization as recommendations for its final action under Section 21, Article 10 of the Constitution.
>
> "All duties, powers and authority of all officers of the State, relating to the adjustment and equalization of the valuation of real and personal property of the several counties of the State, which have been conferred upon them and vested in them, by law, are hereby transferred to, conferred upon and vested in, said Commission; excepting only the duties, powers and authority of

the State Board of Equalization, as fixed and defined by Section 21, Article 10 of the Constitution.

"In the assessment of all property which it is their duty to assess for taxation, all county officers shall continue to perform all the duties required of them, and to exercise all the powers and authority vested in them, by law.

"In the performance of its duties, as herein defined, said Commission, or any duly authorized representative thereof, shall have the power to administer oaths, to conduct hearings, and to compel the attendance of witnesses and the production of the books, records and papers of any person, firm, association or corporation, or of any county; and to enter the premises and inspect the property of any taxpayer."

F-7 TITLE 68, O.S.A., Sec. 15.44:

"The Governor, State Auditor, State Treasurer, Secretary of State, Attorney General, State Examiner and Inspector and President of the Board of Agriculture shall constitute the State Board of Equalization, and said State Board of Equalization shall hold a session at the Capitol of the State, commencing on the third Monday in June of each year for the purpose of equalizing the property of the several counties. It shall be the duty of said Board to examine the various county assessments and to equalize, correct and adjust the same as between the counties by increasing or decreasing the aggregate assessed value of the property or any class thereof, in any or all of them, to conform to the fair cash value thereof as herein defined, and to order and direct the assessment rolls of any county in this State to be so corrected as to adjust and equalize the valuation of the real and personal

property of the several counties; provided, that no change in the assessed valuation of any county in this State shall be binding until ten days notice of said change shall have been given the Board of County Commissioners of said county and an opportunity given for a hearing on said change."

F-8 TITLE 68, O.S.A., Section 15.45:

"In any case where the State Board of Equalization in the equalization of property locally assessed, shall increase the valuation of the property, or any class thereof, in any county, the Board shall notify, by mail, the Board of County Commissioners of said county, giving the amount of such valuation as increased. Either the County Attorney, acting under the direction of the Board of County Commissioners and for the entire taxpaying public of the county, or any taxpayer who might feel aggrieved at the change in the equalized value of his property, shall have ten days from date of such notice to the County Commissioners, in which to file with the Secretary of said Board a written complaint specifying his grievances and the pertinent facts in relation thereto in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended.

"Upon receipt of said complaint the Board shall fix a date of hearing when said Board shall be authorized and empowered to take evidence pertinent to said complaint; and for that purpose, is authorized to compel the attendance of witnesses and the production of books, records and papers by subpoena, and to confirm, correct or adjust the valuation, as may seem just."

F-9 TITLE 68, O.S.A., Section 15.46:

"Any County Attorney or aggrieved taxpayer who shall within the time and manner provided by law file a written complaint before the State Board of Equalization and shall introduce evidence pertinent to such complaint, shall have the right to appeal from the findings of the Board, and, for this purpose, the Secretary of said Board shall cause such evidence to be taken and preserved, and shall cause such complaint and evidence, with a full transcript of the orders of the Board thereon, to be transcribed and shall certify to the same.

"Such transcript shall be filed by such County Attorney, or aggrieved person, in the Supreme Court, within ten days from the adjournment of said Board, which shall complete the appeal allowed by law. Such transcript shall, in due course, be examined and reviewed by said Court, and affirmed, modified or annulled as justice may demand; provided, that in order to perfect such appeal, the appellant shall file notice thereof, with the Secretary of the State Board of Equalization, within ten days after the adjournment of said Board."

APPENDIX "G"

G-1 "The Witness: [County Assessor] I'd like to make one point here. Now, outside the urban of Enid, we have two elevators, 'Y' and 'Z', the world's largest, owned by the Union Equity Incorporated Exchange. These elevators are assessed by the personal property schedule and then put on the tax rolls, and tax personal property schedule is

listed as 35 per cent of the value. Now, it sets in a quarter section of land; it's rural and according to the order it will be raised 10 per cent; otherwise assessed now at $2,798,000.00, and it will raise the valuation $278,000.00, while at Enid Terminal Elevators, Pillsbury Mills are setting inside the city limits—they are not by page—but they go by the same personal property schedule and they will only be increased by 1.75.

Mr. Gregory: Well, now here's the point with reference to us, the important point with us, as he has brought out. With reference to this elevator, we feel they should all be treated alike. In other words, those elevators that's inside the city limits will be raised 1.75 per cent and those that are out in the rural will be raised 10 per cent which we feel is unjust and unconstitutional.

Governor Edmondson: How many elevators do you have inside the city limits?

The Witness: General Mills, Pillsbury; Johnston, they have an elevator also inside, and Farmers Grain; Enid Terminal, and that's it. And there's some co-op consumers. Co-op has a small elevator or two in the town."

G-2 "Q. (By Mr. Carter) (To the County Assessor, Witness) You have been following the instructions of the Oklahoma Tax Commission in assessing elevators?

A. That is correct.

Q. And the form set by the Oklahoma Tax Commission?

Mr. Cornelius: Am I to understand they told you to assess that way?

The Witness: They did not tell me; I used it as a guide.

Mr. Cornelius: You said you were 'following the instructions.' I take that to mean they told you.

The Witness: It's in this book, per bushel.

Mr. Cornelius: That you are to assess . . .

The Witness: Up to 10 cents. I assume if I wanted to take it at four cents a bushel I could if I wanted to. That's the schedule pertaining to 25 per cent of the fair cash value.

Q. (By Mr. Carter) You have been assessing them up to the maximum under the formula provided by the Tax Commission as suggested?

A. That's right, 'suggested.' "

APPENDIX "H"

STATE AUDITOR
(SEAL)

ANDY ANDERSON
STATE AUDITOR

JEFF F. KETDALL
ASSISTANT AUDITOR

OKLAHOMA CITY
August 5, 1960

The Board of County Commissioners and County Assessor
c o County Clerk
Garfield County
Enid, Oklahoma

Gentlemen:

Pursuant to the provisions of the Statutes relative to the equalization of the valuations of property locally assessed in the various counties of the State for ad valorem and in-

tangible personal property taxation, the State Board of Equalization by a majority vote in regular meeting on the 3 day of August, 1960, fixed the valuations of the real and personal property of your county for the year of 1960 as follows, to-wit:

Rural Land and Improvements	$21,609,296. which is a 10.00% increase
Urban Land and Improvements	$29,454,701. which is a 1.75% increase
Personal	$15,902,620. which is no increase
Total	$66,966,617.

The valuation of the intangible personal property for your county was fixed as follows, to-wit:

2 - Mills	$16,392,540. which is no increase
4 - Mills	$28,949,110. which is no increase
Total	$45,341,650.

This notice is given you in accordance with the provisions of Title 68, O.S. 1951, Sec. 15.45, under said section, * * "either the *County Attorney* acting under direction of the Board of County Commissioners and for the entire tax-paying public of the county, or *any taxpayer* who might feel aggrieved at the change in the equalized value of his property, shall have *ten days* from the date of such notice to the County Commissioners in which to file with the Secretary of said Board a written complaint specifying his grievances and the pertinent facts in relation thereto in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended."

Respectfully yours,

/s/ ANDY ANDERSON

APPENDIX "I"

BEFORE THE STATE BOARD OF EQUALIZATION

IN THE MATTER OF THE PROPOSED :
INCREASE IN TAX ASSESSMENTS. : NO.

COMPLAINT OF UNION EQUITY COOPERATIVE EXCHANGE OF ENID, OKLA.

COMES NOW Union Equity Cooperative Exchange of Enid, Oklahoma, a land owner and taxpayer of Garfield County; and states that it is aggrieved and complains of the action of the State Board of Equalization rendered on August 3, 1960, which proposes to increase the assessed evaluation of its property, and thereby its ad valorem taxes for the year 1960, by 10%.

As grounds for its complaint taxpayer specifies its grievances and pertinent facts in relation thereto, as follows, to-wit:

I

THE PROPOSED INCREASE IS ARBITRARY, DISCRIMINATORY, AND CAPRICIOUS AND IN VIOLATION OF ARTICLE TEN, SECTION FIVE, OF THE CONSTITUTION OF OKLAHOMA REQUIRING UNIFORMITY OF TAXATION UPON THE SAME CLASS OF SUBJECTS, THE EFFECT THEREOF WILL BE TO DEPRIVE THIS TAXPAYER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.

Taxpayer is the owner and operator of a substantial office building and large concrete grain elevators situated outside of the city limits of The City of Enid, but in close proximity thereto.

That its annual ad valorem taxes upon said real estate and improvements consisting of the land, the office building

and thirty million bushel capacity elevator facilities situated thereon, are already extremely high and quite substantial. That there are other grain elevators engaged in the same type of storage and grain merchandising business as this taxpayer, some of which are located inside the city limits of Enid, and some of which are located outside the city.

That under the terms of the Order of this Board, the 1960 ad valorem tax of this taxpayer on said office building, elevators and the land upon which they are situated, would be increased by 10%; while the ad valorem tax on other similar elevators and office buildings inside the city limits would only be increased by 1.75%. Such discrimination is unlawful.

As stated by the Honorable Justice Welch, concurred in by all the court in 1949, in the case of *Custer County Excise Board* v. *St. Louis, San Francisco Railway Co.*, 207 P.2d 774.

> "Obviously, there is no difference between rural property and urban property in its relation to an ad valorem tax or a tax based on values so that one property may be distinguished from the other as an object of taxation. Location alone is not a basis for the classification of the property for purposes of taxation on a basis of value. Rural and urban property being in the same class as a subject of ad valorem tax it follows that uniformity requires that all such property within the confines of the county for which an ad valorem tax is levied should be treated alike * * *"

Your taxpayer further represents to this Board that it is its information and belief that the proposed increase of 10% on rural lands and improvements is based upon an investigation made by a team from the Oklahoma Tax Commission which made a ratio study comparing the sale price of certain farms within Garfield County as compared with the assessed evaluations thereof; and simply because

the properties of this taxpayer happen to be located outside of the city limits, the Board has arbitrarily applied the results of that study to the industrial property of this taxpayer.

That no comparative relationship exists whatever between land devoted to agricultural and ranching use, and the land and improvements of this taxpayer devoted to industrial and commercial use. The proposed increase based upon such fallacious comparisons and then pyramided on a fictitious classification founded entirely upon a municipal boundary line, is therefore manifestly unfair and unjust; and would deprive this taxpayer of its property without due process of law.

WHEREFORE, your complainant prays that the action of this Board on August 3 with respect to such proposed increases in assessments within Garfield County be rescinded.

UNION EQUITY COOPERATIVE EXCHANGE

By .....

.....

FRANK CARTER
Bass Building
Enid, Oklahoma
Attorney for Complainant
of
OTJEN, CARTER, HUDDLESTON & OTJEN

APPENDIX "J"

"PROPOSITION I.

The proposed increase is arbitrary, discriminatory, and capricious and in violation of Article 10, Section 5, of the Constitution of Oklahoma requiring uniformity of taxation upon the same class of subjects. The effect thereof will be to deprive this taxpayer of its property without due process of law."

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 523

UNION EQUITY COOPERATIVE EXCHANGE, INC.,
ENID, OKLAHOMA,
Petitioner,

VERSUS

OKLAHOMA STATE BOARD OF EQUALIZATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

MAC Q. WILLIAMSON,
Attorney General of Oklahoma.

FRED HANSEN,
First Assistant Attorney General.

R. O. INGLE,
Assistant Attorney General.

ALBERT D. LYNN,
General Counsel,
Oklahoma Tax Commission.

E. J. ARMSTRONG,
Assistant General Counsel,
Oklahoma Tax Commission,

Attorneys for Respondent.

December, 1961.

UTTERBACK TYPESETTING CO. 13 SO. WALKER OKLAHOMA CITY PH. CE 5-8750

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Question Presented 1

Should the United States Supreme Court take jurisdiction to review an order of the Oklahoma State Board of Equalization, affirmed by the Supreme Court of Oklahoma, which order on its face appears to increase the assessed valuation of Petitioner's property in excess of the limit fixed by the Oklahoma Constitution, for the purpose of adjusting such assessment, or is Petitioner required to pursue the remedy provided by Oklahoma law by bringing suit in the local court to recover the alleged excessive taxes resulting therefrom? 2

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2. The petitioner has not exhausted his remedy before local courts of Oklahoma 4
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In the
Supreme Court of the United States

OCTOBER TERM, 1961

No. 523

UNION EQUITY COOPERATIVE EXCHANGE, INC.,
ENID, OKLAHOMA,
Petitioner,

VERSUS

OKLAHOMA STATE BOARD OF EQUALIZATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

QUESTION PRESENTED

We do not agree with petitioner's statement of the "Question Presented" at page three of its Petition. The State Board of Equalization did not arbitrarily discriminate against petitioner by increasing its assessed valuation on its elevators and other properties as stated by petitioner. The State Board of Equalization cannot equalize assessments as between properties within a county. The Oklahoma statutes contemplate that such equalization be done by the local officials under 68 O.S.A., Sections 15.11 and 15.41 (Appendix I-A and I-B). The State Board has authority only to equalize the assessed valuation of properties as between counties, or as between classes of property

within counties. Section 21, Article 10, Oklahoma Constitution (Appendix "F", petitioner's petition herein) and 68 O.S.A., Section 15.44 (Appendix I-C).

The question presented, in our opinion, should be stated as follows to-wit:

> Should the United States Supreme Court take jurisdiction to review an order of the Oklahoma State Board of Equalization, affirmed by the Supreme Court of Oklahoma, which order on its face appears to increase the assessed valuation of Petitioner's property in excess of the limit fixed by the Oklahoma Constitution, for the purpose of adjusting such assessment, or is Petitioner required to pursue the remedy provided by Oklahoma law by bringing suit in the local court to recover the alleged excessive taxes resulting therefrom?

REASONS FOR NOT GRANTING THE WRIT

The respondent respectfully submits that the writ should not be granted because:

1. The question urged by petitioner was not presented, argued and supported by citation of authority to the Supreme Court of Oklahoma.

It is true the Supreme Court of Oklahoma disposed of the appeal of the petitioner in a memorandum decision wherein such appeal was disposed of by reference to a companion case styled *Board of County Commissioners of Garfield County* v. *State Board of Equalization*, decided June 13, 1961, 363 P.2d 259. The Supreme Court of Oklahoma in its memorandum decision said:

> "The Court finds . . . that the matter has been determined in favor of the State Board of Equalization and against Garfield County . . . in an opinion promulgated June 13, 1961." (See Appendix "A" to Petition for Writ.)

The Supreme Court of Oklahoma in the Garfield County decision said this:

> "There is no material difference between the arguments advanced under plaintiff in error's two propositions for reversal here, and those advanced under the first two propositions the appellant urged for reversal in that case, except here plaintiff in error adds to its second proposition, the assertion that the order '. . . WILL DEPRIVE A TAX-PAYER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.' However, plaintiff in error's brief sets forth no argument nor authority to support said assertion. It therefore presents no ground for reversal. Thrasher v. Board of Governors, Okl., 359 P. 2d 717. All other arguments of plaintiff in error have been rejected as grounds for the order's reversal in Cause No. 39321, supra. The applicable portions of our opinion in that case are therefore adopted, by reference, as our opinion herein."

At Appendix "I", page xxix of the Petition herein, is the original complaint of the petitioner as filed with the State Board of Equalization and it will be noted that the only reference made therein to the question here presented is the flat assertion that petitioner's property will be taken without due process of law.

The rule in this Court pertaining to this matter is stated in *Hulbert* v. *Chicago*, 202 U.S. 275, 26 S. Ct. 617, 618.

> "According to the practice of the court, an error not assigned is not open to review. Berry v. Chicago, 192 Ill. 154, 155, 61 N.E. 498. Errors assigned, but not noticed or relied on in the brief or argument of counsel, will be regarded as waived or abandoned. Keys v. Kimmel, 186 Ill. 109, 114, 57 N.E. 851. And such rule of practice will be recognized by this court. Erie R. Co. v. Purdy, 185 U.S. 148, 153, 46 L. ed. 847, 850, 22 Sup. Ct. Rep. 605."

In other words the petitioner simply alleged before the Board and before the Supreme Court of Oklahoma that its property would be taken without due process of law, yet offered no argument and cited no authorities in support of this position. This caused the Supreme Court of Oklahoma to treat his allegation as abandoned.

2. The petitioner has not exhausted his remedy before local courts of Oklahoma.

The contention urged by respondent herein is that the blanket increase of ten per cent in rural lands in Garfield County will result in the assessment of its property in excess of 35 per cent of the fair market value limitation which is fixed by the Constitution of Oklahoma. (Art. 10, §8 as amended) (Petition, Appendix "F," page xxi.)

The Supreme Court of Oklahoma considered petitioner's case along with fourteen other companion cases. In the case styled, *In the Matter of the Increase in Valuation of the State Board of Equalization of Real Property of Washington County, Oklahoma*, 363 P.2d 269, it was argued that to apply the order of increase in assessed

values to rural lands would result in some tracts being assessed at more than 35 per cent of its fair, cash value and a violation of Art. 10, §8 of the Oklahoma Constitution. The Court at page 271, 363 P.2d, *supra*, stated:

> "* * * We are inclined to believe that excessive revenue stamps were placed on said deeds but if in this we err, and the appealed-from order results in excessive assessments, an aggrieved tax-payer under the facts of this case is privileged to seek relief under 68 O.S. 1951 § 15.50."

This statute (Sec. 15.50) reads as follows:

> "In all cases where the illegality of the tax is alleged to arise by reason of some action from which the law provides no appeal, the aggrieved person shall pay the full amount of the taxes at the time and in the manner provided by law, and shall give notice to the officer collecting the taxes showing the grounds of complaint and that suit will be brought against the officer for recovery of them. It shall be the duty of such collecting officer to hold such taxes separate and apart from all other taxes collected by him, for a period of thirty days, and if within such time summons shall be served upon such officer in a suit for recovery of such taxes, the officer shall further hold such taxes until the final determination of such suit. All such suits shall be brought in the Court having jurisdiction thereof, and they shall have precedence therein. If, upon final determination of any such suit, the Court shall determine that the taxes were illegally collected, as not being due the State, county or subdivision of the county, the Court shall render judgment showing the correct legal amount of taxes due by such person, and shall issue such order in accordance with the Court's findings, and if such order shows that the taxes so paid are in excess

of the legal and correct amount due, the collecting officer shall pay to such person the excess and shall take his receipt therefor."

This section of the statute authorizes a suit for recovery of any alleged excessive taxes paid and petitioner therefore has an adequate remedy if it be correct in its contention as asserted to this Court. It has not pursued that remedy and we submit that it should do so.

3. There are no "special and important reasons" for granting certiorari in this case.

There are no special, important or substantial reasons, as required by Rule 19, for granting certiorari herein because this case involves the assessment of petitioner's property for one year only and the amount of the assessment is not continuing or permanent. As stated by petitioner under Point 5, on page 8 of its petition herein, petitioner has paid its tax under protest and same is being held in suspense by the County Treasurer, and we have demonstrated, under our Point 2 above, that petitioner may, under 68 O.S.A., Section 15.50, bring suit to recover any alleged excessive or over payment of such tax. The result of such an action by petitioner will not affect the rights of any other taxpayer.

Petitioner, or any taxpayer, may each year, list his property with the County Assessor of Garfield County, for assessment at a valuation which he believes proper under 68 O.S.A., Section 15.11 (Appendix I-A). If, in any year, the County Assessor should increase the assessed valuation of such property above that returned, relief may be had by filing a proper complaint with the County Board of Equalization, as provided in 68 O.S.A., Section 15.41

(Appendix I-B). If the taxpayer is not satisfied with the decision of the County Board of Equalization, he is given the right of appeal to the State District Court and there to the State Supreme Court by 68 O.S.A., Section 15.42 (Appendix I-D).

Since, therefore, petitioner's property is assessed for ad valorem taxation for each year separately and the assessment for 1960, the year in question, is not a continuing and permanent assessment, and since petitioner is privileged to seek relief by a suit for refund of any alleged excessive payment of taxes made by it for 1960, there is no special, substantial or important reason for granting certiorari herein under Rule 19.

4. Implicit in the orders of the State Board of Equalization, which were affirmed by the Supreme Court of Oklahoma, is the condition that no property should be increased in value above the thirty-five per cent limitation fixed by the Oklahoma Constitution.

In other words it is an elementary and fundamental rule of law that every public official is presumed to follow the law, and it must be presumed that no County Assessor will increase any property on his rolls beyond the 35 per cent limitation fixed by the Oklahoma Constitution.

In another of the companion cases, *Board of County Commissioners of Canadian County, Oklahoma* v. *State Board of Equalization*, 363 P.2d 242 (See Petition Appendix "C", page iv), the Oklahoma Court discusses the whole problem of increase of valuations in the various counties of the State of Oklahoma.

The petitioner quotes from the case of *Custer County Excise Board* v. *St. Louis-San Francisco Railway Company*, 207 P.2d 774, at page 7 of its petition as follows:

> "Obviously there is no difference between rural property and urban property in its relation to an ad valorem tax or a tax based on values, so that one property may be distinguished from the other as an object of taxation. Location alone is not a basis for the classification of the property for purposes of taxation on a basis of value. Rural and urban property being in the same class as a subject of ad valorem tax, it follows that uniformity requires that all such property within the confines of the county for which an ad valorem tax is levied should be treated alike * * *."

The Oklahoma Court in the Canadian County case (see Petition, Appendix "C," page ix) in dealing with that decision said:

> "The language quoted by appellant from Custer County Excise Board v. St. Louis & S.F. Ry. Co., 201 Okla. 528, 207 P. 2d 774, is not applicable here. There, this Court was obviously referring to 'rate of levy,' rather than to valuation. In Blake v. Young, 128 Okla. 153, 261 P. 923, we held that the uniformity provision in the Oklahoma Constitution's Art. X, sec. 5, which appellant claims the challenged order violates, relates to the rate of taxation, and not to the valuation of property. See, also Cooley on Taxation (4th Ed.) p. 638."

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

MAC Q. WILLIAMSON,
Attorney General of Oklahoma,

FRED HANSEN,
First Assistant Attorney General,

R. O. INGLE,
Assistant Attorney General,

ALBERT D. LYNN,
General Counsel,
Oklahoma Tax Commission,

E. J. ARMSTRONG,
Assistant General Counsel,
Oklahoma Tax Commission,

Attorneys for Respondent.

December, 1961.

APPENDIX I

I-A Title 68, O.S.A., Sec. 15.11:

"On or before January 1st of each year, the Oklahoma Tax Commission shall prescribe for the use of all county assessors, suitable blank forms for the listing and assessments of all property, both real and personal. Such forms shall contain such information and instructions as may be necessary in order, to obtain a full and complete list of all taxable property, and such forms shall be used uniformly throughout the State.

"It shall be the duty of the Assessor to furnish such forms to any taxpayer upon request, and all personal property shall be listed on such forms in the manner provided therein; and such lists shall be signed and sworn to and filed with the County Assessor not later than March 15th of each year; and such lists may show the description of real property, which may be by subdivision of quarter sections, or less if any such subdivision is owned in less quantity describing such less quantity by United States Land Survey nomenclature if that can be done, otherwise by metes and bounds, according to ownership. *Real Estate need not be listed by the taxpayer, but may be listed by him if he desires, in which case the list shall show the taxpayer's estimate of the value of each tract of land and shall separately show the value of the buildings and improvements thereon.* All such sworn lists of property shall contain such other information concerning both real and personal property as may be required by such forms so prescribed * * *." (Emphasis supplied.)

I-B Title 68, O.S.A., Sec. 15.41:

"In any case where the County Assessor shall increase the valuation of any property above that returned by the taxpayer, or in the case of real estate, increase the valuation

over the assessment for the Preceding year, the Assessor shall notify the person in whose name any such property is listed, giving the amount of such valuation as increased. Such notice may be by mail or delivery to the last known address of such person, or to the person in charge or possession of the property. In any case where the county Board of Equalization shall increase the valuation of any property above the value returned by the taxpayer, or shall add property not listed by the taxpayer, or in the case of real estate increases the valuation over the assessment for the preceding year, the Secretary of the County Board of Equalization shall notify by mail to his last known address, the person in whose name any such property is listed, giving the amount of such valuation as increase. In all cases where notice by mail is required under this Section, the same shall describe the property with sufficient accuracy so as to notify the taxpayer as to the property included, together with the assessed value of the property; and duplicate copies of the notice showing the date of issuance and mailing, shall be kept in the office of the Assessor or the Secretary of the Board, as the case may be which record so kept shall be prima facie evidence as to the fact of the notice having been given as required. The taxpayer shall have ten days from date of the mailing of such notice in which to file, with the Secretary of said Board, a written complaint, specifying his grievances, and the pertinent facts in relation thereto in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended. Complaint in like manner may be filed on real estate not increased over the previous year's assessment, provided such complaint is filed on or before the first Monday in May. Complaint in like manner may be filed with the Board by the Taxpayer where the County Assessor shall increase the valuation of any property above that returned, or in the case of real estate, shall increase the valuation over the assessment for the

preceding year. Complaint in like manner may be filed by any taxpayer where, pursuant to the authority contained in Section 15.18 the County Assessor has added property not listed by the taxpayer, provided such complaint is filed on or before the first Monday in May. Upon receipt of such complaint the Board shall fix a date of hearing, at which time said Board shall be authorized and empowered to take evidence pertinent to said complaint; and for that purpose, is authorized to compel the attendance of witnesses and the production of books, records, and papers, by subpoena, and to confirm, correct, or adjust the valuation, as may seem just. In all cases where either the County Assessor or the County Board of Equalization has, without giving the notice required by this Section or by Section 15.18 increase the valuation of property as listed by the taxpayer, if he has knowledge of such adjustment or *eddition*, may at any time prior to the adjournment of the Board, file a complaint in the form and manner above provided for. Thereafter the Board shall fix a date of hearing, notify the taxpayer, and conduct the hearing as required by this Section."

I-C Title 68, O.S.A., Sec. 15.44:

"The Governor, State Auditor, State Treasurer, Secretary of State, Attorney General, State Examiner and Inspector and President of the Board of Agriculture shall constitute the State Board of Equalization, and said State Board of Equalization shall hold a session at the Capitol of the State, commencing on the third Monday in June of each year for the purpose of equalizing the property of the several counties. It shall be the duty of said Board to examine the various county assessments and to equalize, correct and adjust the same as between the counties by increasing or decreasing the aggregate assessed value of the property or any class thereof, in any or all of them, to conform

to the fair cash value thereof as herein defined, and to order and direct the assessment rolls of any county in this State to be so corrected as to adjust and equalize the valuation of the real and personal property of the several counties; provided that no change in the assessed valuation of any county in this State shall be binding until ten days notice of said change shall have been given the Board of County Commissioners of said county and an opportunity given for a hearing on said change."

I-D Title 68, O.S.A., Sec. 15.42:

"Both the taxpayer and the County Assessor shall have the right of appeal from any order of the County Board of Equalization to the District Court of the same County, and right to appeal of either may be either upon questions of law or fact including value, or upon both questions of law and fact. In case of appeal the trial in the District Court shall be de novo, but no matter shall be reviewed by the District Court which was not presented to the Board in the Complaint filed with it.

"Notice of appeal shall be filed with the County Clerk as Secretary of the County Board of Equalization, which appeal shall be filed in the District Court within ten days after the final adjournment of the Board. It shall be the duty of the County Clerk to preserve all complaints and to make a record of all orders of the Board and both the complaint and orders shall be a part of the record in any case appealed to the District Court from the County Board of Equalization.

"Either the taxpayer or the County Assessor may appeal from the District Court to the Supreme Court, as provided for in the Code of Civil Procedure, but no matter shall be reviewed on such appeal which was not presented to the District Court.

"In such appeals to the District Court and to the Supreme Court it shall be the duty of the County Attorney to appear for and represent the County Assessor. It shall be the duty of the Attorney for the Oklahoma Tax Commission to appear in such appeals on behalf of the County Assessor either upon request of the County Attorney for assistance, or upon request of the County Assessor. It shall be the mandatory duty of the Board of County Commissioners and the County Excise Board to provide the necessary funds to enable the County Assessor to pay the costs necessary to be incurred by him perfecting appeals made by him to the Courts.

"In all appeals taken by the County Assessor the presumption shall exist in favor of the correctness of the County Assessor's Valuation and procedure followed by him."